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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 576

MRS. MILDRED G. TANNER,

Petitioner,

vs.

PAUL R. ERVIN, Executor of the Estate of ERNEST M. TANNER,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of North Carolina

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CITATIONS

Cases:

Ervin v. Conn 225 N. C. 267, 34 S. E. 2d 402 — 12

Statutes:

28 U. S. C. § 1257 (3) — 2

31 U. S. C. 757c (a) — 3

Treasury Regulations:

United States Treasury Department Regulations Governing United States Savings Bonds, Department Circular No. 530, 7th Revision, May 21, 1952 — 4

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The Petitioner respectfully prays for a writ of certiorari to be issued to the Supreme Court of North Carolina, to the end that this Court may review a judgment which the said Supreme Court of North Carolina has rendered in the above entitled case.

OPINIONS OF THE COURT BELOW

The majority and dissenting opinions of the Supreme Court of North Carolina are reported in 250 NC 602 and 109 S.E. 2d 460 and are appended hereto as Appendix A.

JURISDICTION

The judgment of the Supreme Court of North Carolina was filed on 2 July 1959.

The Petition for Rehearing by the Supreme Court of North Carolina was filed 10 August 1959 and the Order denying the petition for Rehearing is dated and was filed 17 September 1959.

Jurisdiction in this Court to review the judgment of the Supreme Court of North Carolina through the issuance of writ of certiorari is established by the provisions of 28 U. S. C. 1257 (3).

QUESTIONS PRESENTED

1. In deciding a controversy between a surviving co-owner of United States Series E Savings Bonds and the Executor of the deceased co-owner, who claims by virtue of an agreement made by the decedent and the survivor, did the North Carolina Supreme Court err in holding that the purpose of the Treasury Regulations incorporated in the bond contract being to protect and hold the Federal Government immune from attack, the survivorship provision in the bond contract applies only in determining legal title and is inapplicable and without force or effect in determining the beneficial ownership of the bond proceeds?

2. Where husband and wife, co-owners of United States Savings Bonds, enter into an *inter vivos* agreement by which the bonds are made the sole property of the husband, is the survivorship provision of the bond contract thereby made inoperative so that upon the death of the husband the bond proceeds are distributed according to state law governing the devolution of personal property rather than to the surviving

co-owner in accordance with the provisions of the bond contract and Treasury Regulations?

STATUTE INVOLVED

31 U.S.C. 757c. (a):

United States savings bonds and Treasury savings certificates—Authority to issue; use of proceeds

(a) The Secretary of the Treasury, with the approval of the President, is authorized to issue, from time to time, through the Postal Service or otherwise, United States savings bonds and United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by section 757b of this title, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b)-(d) of this section and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe.

TREASURY REGULATION INVOLVED

TREASURY REGULATION DIRECTLY INVOLVED IN THIS CONTROVERSY IS THE FOLLOWING PORTION OF SUBPART L, SECTION 315.45 (c) OF UNITED STATES TREASURY DEPARTMENT REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, DEPARTMENT CIRCULAR NO. 530, 7TH REVISION, MAY 31, 1952:

"(c) Payment or reissue after the death of one co-owner.—If either co-owner dies without having presented and surrendered the bond for payment or authorized reissue, the surviving co-owner will be recognized as the sole and absolute owner of the bond and payment or reissue will be made only to such survivor, as though the bond were registered in his name alone." (R. 25)

Additional provisions of said Regulations relative to the controversy and set forth in Appendix D of this petition are as follows:

Subpart B, Section 315.4, page 1.
Subpart D, Sections 315.11, 315.12 and 315.13, page 5.
Subpart L, Section 315.45, page 14.

STATEMENT OF THE CASE

Mrs. Tanner, the Petitioner, and her husband, the decedent of the Respondent Executor, with jointly earned and owned funds purchased the United States Savings Bonds, Series E, face value $16,000, the subject of this controversy, and had them issued in their names as co-owners. Thereafter, the Tanners executed a separation agreement by which they divided their jointly owned property and agreed to live separate and apart (R. 16, 17). In the separation agreement, the bonds in question were dealt with in the following language:

> "6. It is agreed between both parties hereto that the remaining assets which are jointly held by the parties hereto and shall consist of the savings account at American Trust Company in the sum of $22,467.00 and the United States Savings Bonds having a present value of $17,323.00 and two checking accounts at the American Trust Company and the Union National Bank of Charlotte totalling $24,367.45 shall become and are hereby made the sole property of the party of the first part (Mr. Tanner)." (R. 10 para 6)

The parties actually separated and took into their respective possessions the property as assigned in the separation agreement. Approximately five months after the separation, Mr. Tanner died with the bonds in his possession without having cashed them or changed the form of registration. He left a will making a daughter by a former marriage his sole beneficiary. (R. 16, 17)

The Petitioner brought suit in the Superior Court of North Carolina against Mr. Tanner's Executor for possession of the bonds, alleging the bonds constituted a contract between the United States Government and the designated co-owners of the bonds by the terms of which the Government under-